

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/030904

SEP 25 2002

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MARK: FLIGHT CREW

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Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	TRAVELPRO INTERNATIONAL, INC.	:	BEFORE THE
Trademark:	FLIGHT CREW	:	TRADEMARK TRIAL
Serial No:	76/030904	:	AND
Attorney:	Jennifer P. Rabin	:	APPEAL BOARD
Address:	222 Lakeview Avenue, 4th Floor Post Office Box 3188 West Palm Beach, Florida 33402-3188	:	ON APPEAL

EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the Examining Attorney's final refusal to register the proposed trademark "FLIGHT CREW" for "luggage," in International Class 18, on the ground that it is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1).

I. FACTS

Registration was initially refused under Section 2(e)(1) in an Office Action dated October 6, 2000, because the mark merely describes the goods. The Examining Attorney issued a final refusal under Section 2(e)(1), dated September 25, 2001, and refused a Request for Reconsideration on May 15, 2002. On August 16, 2002, the Applicant submitted an Amendment to Allege Use. The Amendment to Allege Use has been accepted and is now of record. The only issue on appeal is whether the term FLIGHT CREW is merely descriptive under Section 2(e)(1) as applied to Applicant's goods.

II. OBJECTION TO NEW EVIDENCE

It is noted that the Applicant seeks to enter new evidence in an attempt to show the suggestive nature of its proposed trademark, namely, copies of prior registrations identified as Exhibit J of Applicant's Brief. The Examining Attorney objects to the Applicant's inclusion of additional evidence with its appeal brief. 37 C.F.R. Section 2.142(d) clearly states: The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed. After an appeal is filed, if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination.

The Applicant has not complied with these requirements; thus, the new evidence should not be considered a part of the record. *See, In re Norfolk Wallpaper, Inc.*, 216 USPQ 903, 904 (TTAB 1983); *In re Nuclear Research Corp.*, 16 USPQ2d 1316 (TTAB 1990).

III. ARGUMENT

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods/services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ

88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). It is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods to be merely descriptive. It is enough if the term describes **one** attribute of the goods. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982). In this instance, the term "FLIGHT CREW" describes not only some of the intended users of the goods, but also a type of luggage. Furthermore, while there remain other terms that can be used to describe such goods, appropriation by the applicant of this wording would prevent competitors from being able to provide specific information about their goods, namely, that they are used by or popular with FLIGHT CREWS.

A. The term FLIGHT CREW identifies type of goods.

The Applicant has applied to register the term "FLIGHT CREW" for "luggage." When the Applicant's mark is evaluated in light of the goods, the term "FLIGHT CREW" is merely descriptive under Section 2(e)(1). The Examining Attorney must consider whether a mark is merely descriptive in relation to the identified goods, not in the abstract. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The term "FLIGHT CREW" is used in the relevant industry to describe a type of small carry-on luggage with wheels and pull handles popularized by FLIGHT CREWS.

The following are excerpts from Lexis/Nexis,¹ articles and advertisements, as originally attached to the October 6, 2000 Office action, which clearly show the term "FLIGHT CREW" used to describe a type of luggage:

'Flight-crew' bags – the kind with wheels – work best, but some pull more weight than others. . . . Here are some basic facts about **flight-crew** luggage: Size. They were designed originally to be used as carry-on luggage. (Emphasis added).

¹ The Trademark Trial and Appeal Board has held that materials obtained through computerized text searching are competent evidence to show the descriptive use of terms under Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1). *In re National Data Corp.*, 222 USPQ 515, 517 n.3 (TTAB 1984). The Examining Attorney submits that such evidence is also competent to support a requirement under Section 2(e)(1) of the Trademark Act.

Flight Crew bags, which can hold what you need for a three-day trip, are more mobile and versatile than their predecessors. (Emphasis Added)

Better-equipped travelers cruise easily down the concourse pulling a **flight-crew** bag, the biggest innovation in luggage in years. . . . Flight-crew bags, which can hold what you need for a three-day trip, are more mobile and versatile than their predecessors. (Emphasis added).

As travel picks up, so does the popularity of **flight crew** bags a [sic] those soft-sided suitcases with built-in wheels and a long handle for pulling. (Emphasis added).

New style luggage makes travel less of a strain on your back. . . . (There also is a great rating chart of current **flight crew** bags in Consumer Reports, December 1995.) (Emphasis Added)

The Applicant argues that the mark FLIGHT CREW is not primarily merely descriptive because it has more than one meaning. The examining attorney must consider descriptiveness in relation to the relevant goods or services. The fact that a term may have different meanings in another context is not controlling on the question of descriptiveness. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). TMEP §1209.03(e). In this case, the term FLIGHT CREW is used in conjunction with the style of luggage used by FLIGHT CREWS or referring to the intended purchaser of the luggage, namely, FLIGHT CREWS.

The Applicant submits that the Examining Attorney's attached evidence all contain references to a single article from a 1995 *Consumer Reports* magazine. *Consumer Reports* is a major products review publication that compares and evaluates new goods. *Consumer Reports* appears to have first used the term descriptively in 1995. There is no indication in the record that the Applicant attempted to stop the proliferation of the term by *Consumer Reports* or any of the publications that used the term thereafter. Moreover, the Applicant's first use of the term FLIGHT CREW on its goods, as stated in its amendment to allege use, is November 30, 2000, five years after the term had been used to describe a type of suitcase. Please see Amendment to Allege Use

filed on August 16, 2002. It appears from the attached articles that major publications continue to use the same descriptive term to categorize luggage with wheels and pull handles.

B. The term FLIGHT CREW identifies intended uses of goods.

The applicant asserts in its brief and through the submitted declarations that the term FLIGHT CREW "generally refers to the pilots and flight attendants on an aircraft." Numerous articles attached to the Examining Attorney's previous Office Actions demonstrate that goods in the nature of those identified are described as luggage popularized by airline FLIGHT CREWS. For example:

That's because ASU's primary customers are airline **flight crews**, and the airport is a convenient place to find them. ASU specializes in the wheeled luggage that **flight crews** have used for years and which more of us are buying. (Emphasis added).

Produced by various companies and starting around \$90, this is the same style of luggage we've all seen **flight crews** dragging behind them for years. (Emphasis added)

The Applicant's own specimen of record states "[t]hat's why Travelpro's 'Pilot Designed, Flight Crew Tested' styles are used by over 425,000 professional **flight crew** members worldwide." (Emphasis added). The Applicant's specimen of use touts the fact that nearly half a million professional FLIGHT CREW members are users of the Applicant's carry-on luggage.

The Applicant argues that the mark is not descriptive of the goods because the term FLIGHT CREW is used to identify pilots and flight crews, not the style of the bags popularized by FLIGHT CREWS. The term FLIGHT CREW is not only used to describe the type of luggage used by FLIGHT CREWS (and now adopted by most travelers), but to also describe an intended class user of the bags. A term which identifies a group to whom the applicant directs its goods or services is merely descriptive. *See Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER found merely descriptive of a trade journal directed toward users of large data processing systems; evidence sufficient to establish §2(f) distinctiveness); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984) (MOUNTAIN CAMPER held merely

descriptive of retail mail order services in the field of outdoor equipment and apparel). The Applicant asserts that such is not the case here where Applicant's marketing and sales efforts are directed to the general public. However, the Applicant's advertising specifically states that over 425,000 professional flight crew members use the Applicant's products. 425,000 professional FLIGHT CREW members seems to be an appreciable number of the type of individuals to whom the Applicant's goods have been directed.

C. Competitors' Need / Consumers' Understanding.

To allow Applicant to appropriate the descriptive term FLIGHT CREW would have the effect of precluding Applicant's competitors from describing their luggage as the type of carry-on bag used by professional travelers, namely, "the same type of luggage used by FLIGHT CREWS." See *Miller Brewing Co. V. G Heilman Brewing Co., Inc.*, 561 F.2d 75, 195 USPQ 281 (7th Cir. 1997), cert. Denied, 434 U.S. 1025, 54 L.Ed. 2d 772, 98 S Ct. 751, 196 USPQ 592 91978) (holding the term LIGHT BEER generic for beer light in body and taste). The Applicant's competitors would need to use the descriptive term FLIGHT CREW in order to remain competitive with Applicant.

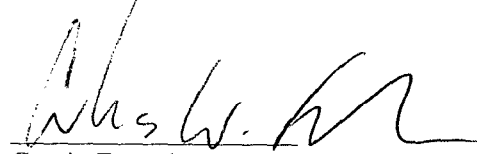
Furthermore, most consumers of products of this type are reasonably informed as to the goods and their use. The relevant purchasing public usually has a basic knowledge of the product facilitating an informed purchasing decision. See *G. Heileman Brewing Co. v. Anheuser-Busch, Inc.*, 873 F.2d 985, U.S.P.Q.2d 1801 (7th Cir. 1989). As stated previously, the Applicant's advertising describes the Applicant's product as being used and purchased by FLIGHT CREWS. The Applicant has made strides to advertise its product and convey to the consumers the benefit of its product over those of its competitors, namely, to state that it's products are used by professionals in the field. Therefore, relevant consumers have been exposed to the product and information related to it, and are likely to know that the product is the same style of luggage used by FLIGHT CREWS.

Accordingly, as the term FLIGHT CREW describes a particular type of luggage as well as a significant portion of the intended user of such goods, the relevant public would understand this designation to refer to the same. The proposed mark is therefore unregistrable because it is highly descriptive of the goods under Section 2(e)(1) of the Trademark Act.

IV. CONCLUSION

For the foregoing reasons, the refusal to register under Section 2(e)(1) of the Trademark Act should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Curtis French", is written over a horizontal line.

Curtis French
Trademark Examining Attorney

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